THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.M.P.No.25402 of 2007

in

W.P.No.18556 of 2007

Date: 17-09-2007

Between:

B.Brahmaiah

…Petitioner

And

The Sub-Registrar,
Kadapa District and others.

…Respondents

ORDER:

This application is filed with a prayer to post the writ petition

for ‘for being mentioned’.

It is represented that an order which is referable to different set of facts was passed in the writ petition, while disposing of it on 31.08.2007.

The learned counsel for the petitioner submits that the facts of the writ petition are similar to those in W.P.Nos.14743 and 14750 of 2007. The writ petitions are disposed of through a common order, dated 26.07.2007.

On verification of the matter, it is evident that the petitioner purchased the land in an auction conducted by the District Cooperative Central Bank, Kadapa. The registration was refused on the ground that the land in question was assigned.

In W.P.Nos.14743 and 14750 of 2007, this Court took the view that where assigned lands are brought to sale by the Cooperative societies for foreclosure of mortgage, the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 do not apply, by virtue of Section 6 thereof. This finding is not disputed by the learned counsel for the respondent.

Having regard to the facts and circumstances of the case, the order, dated 31.08.2007, is recalled and in its place, the following order is passed.

The question that arises for consideration in this writ petition is whether the prohibition contained under Section 5 of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (for short ‘the Act’), applies to the land, which was brought to sale by a Co-operative Society, mentioned in Section 6 of the Act, for redemption of mortgage, made in its favour.

One Sri Policherla Venkatesubbarayudu was assigned Government land admeasuring Ac.5.33 cents in Sy.No.416/1. He raised loan from the Primary Agricultural Cooperative Society of the area, affiliated to District Cooperative Central Bank Limited, Kadapa.

As a security for repayment, he mortgaged the land, assigned to him. Since the loan remained unpaid, recovery certificate was obtained from the competent authority under Section 71 of the A.P. Cooperative Societies Act (for short 'the APCS Act') by the creditor society. Thereafter, the property was put to sale. The petitioner has purchased the land that was brought to sale.

After the sale in favour of the petitioner became final, his name was mutated in the revenue records, and he was issued pattadar passbook.

The petitioner intended to sell his property in favour of the third parties. For this purpose, he approached the first respondent,

Sub-Registrar, Kadapa. He claims to have presented the sale deed before the first respondent, for registration. It is stated that,

on the information furnished by the Tahsildar of Kadapa Mandal, the first respondent is not entertaining the document by treating the property, as assigned land.

The learned counsel for the petitioner submits that though the land purchased by the petitioner was, at one point of time, assigned to one Policherla Venkatasubbarayudu, it came to be sold by the Cooperative Central Bank, on behalf of the Primary

Agricultural Cooperative Societies, affiliated to it, for recovery of loan, raised by the assignee, on the basis of mortgage.

He contends that the prohibition contained under Sections 3 and 5 of the Act, does not apply to the transactions of an assignee, and financial institutions, owned by the State, such as Primary Agricultural Cooperative Society, as mentioned in Section 6 of the Act.

Learned Government Pleader for Revenue took instructions at the stage of admission, and made extensive submissions.

He contends that an assigned land always retains its character, and the prohibition brought about by the Act continues to operate.

It is urged that an otherwise invalid sale cannot change the character of the lands, nor can bring about new legal regime. He places reliance upon the judgments of this Court in ***B.Ramaiah, v. Mandal Revenue Officer, Puttaparthi***[1] and ***Harijana Bazarappa v. Chakarala Ranganna***[2].

The Act prohibits alienation of assigned lands. While Section 3 renders all categories of transfers of assigned land, as *void ab initio*, Section 5 prohibits the registration of any document, evidencing such transfers. Any sale or transfer, in contravention of the provisions of the Act, cannot change the character of land, and the objection can be raised at any point of time. Successive transactions, which are otherwise prohibited, do not bring about any change as to the legal implications.

The Legislature, however, carved out an exception as regards the prohibition imposed under Sections 3 and 5 of the Act.

Section 6 reads as under:

> "**Sec.6**: Nothing in this Act shall apply to the assigned lands held on mortgage by the State or Central government, any local authority, a co-operative society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government, as may be notified by the Government in this behalf".

From a reading of this provision, it is evident that if the transfer by way of mortgage is in favour of a State or Central Government, any local authority, a Co-operative Society, or a Scheduled Bank, or any financial institution, controlled or managed by State or Central Governments, the provisions of the Act do not apply.

The record discloses that the land assigned in favour of the beneficiary was mortgaged in favour of Primary Agricultural Cooperative Society, as security for repayment of loan. In view of the default committed by the borrower, steps were taken to foreclose the mortgages. Sale certificate under Section 71 of the A.P.C.S. Act was obtained and further steps were taken. In the ultimate analysis, the petitioner emerged as the successful bidder and the competent authority affirmed the sale, in his favour. Revenue record is also mutated correspondingly.

In ***B. Ramaiah's*** case (*1 supra*), the land assigned to a beneficiary was mortgaged in favour of an Agricultural Development Bank. Even while the mortgage was subsisting, the assignee sold the land to third parties. When steps were initiated under the Act, transferee claimed exemption under Section 6 of

the Act. Extensive discussion was undertaken, and the provisions of the Act were analyzed. The Division Bench of this Court held that, mere existence of mortgage does not enable the assignee, to sell the land to third parties. It was pointed out that the benefit under Section 6 of the Act enures to the Cooperative Society, in whose favour, the land was mortgaged.

The facts of the present case are different. The petitioner is transferee from the Society, in whose favour the land was mortgaged. Once the mortgage in favour of the cooperative society is exempted, the other consequential steps taken for foreclosure of the same, would also stand exempted. The net result is that, if an assigned land comes to be sold, in pursuance of a mortgage, which is exempted under Section 6, it looses the characteristics of assigned land, and the exemption continues to be available to the purchasers from the society or financial institutions, as the case may be.

The ratio in ***Harijana Bazarappa's*** case (*2 supra*) has no application to the facts of this case. The prohibition contained in Section 3 of the Act, was reiterated and the exemption under Section 6 of the Act was, neither claimed, nor was dealt with.

For the foregoing reasons, the writ petition is allowed, and it is directed that the property purchased by the petitioner, in the sale conducted by the District Co-operative Central Bank Ltd., Kadapa, shall not be treated as assigned land, and the document presented for transfer, shall be entertained by the first respondent, and processed, in accordance with law. There shall be no order as to costs.

17.09.2007

kdl

---

[1] 1990 (1) ALT 290

[2] 2004 (1) ALD 284 (2)